

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Amended After Comments)

5 907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver
6 Services.

7 RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a,
8 b, d, n

9 STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3),
10 205.6317

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
12 Services, Department for Medicaid Services, is required to administer the Medicaid
13 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to com-
14 ply with any requirement that may be imposed, or opportunity presented, by federal law
15 to qualify for federal Medicaid funds. This administrative regulation establishes the re-
16 imbursement policies for SCL waiver services provided to individuals pursuant to the
17 new Supports for Community Living (SCL) waiver program established by 907 KAR
18 12:010 rather than the program established pursuant to 907 KAR 1:145. Providers who
19 provide SCL waiver services to individuals pursuant to 907 KAR 1:145 shall continue to
20 be reimbursed pursuant to 907 KAR 1:155. The SCL waiver program is federally au-
21 thorized via a 1915(c) home and community based waiver which enables

1 individuals with an intellectual or developmental disability to reside and receive services
2 in a community setting rather than in an intermediate care facility for individuals with an
3 intellectual or developmental disability. **Funding for the SCL waiver program is asso-**
4 **ciated with and generated through SCL waiver program participants rather than**
5 **SCL waiver service providers.**

6 Section 1. Definitions. (1) "Allocation" means the dollar amount designated to
7 meet a participant's identified needs.

8 (2) "DBHDID" means the Department for Behavioral Health, Developmental and In-
9 tellectual Disabilities.

10 (3) "Department" means the Department for Medicaid Services or its designee.

11 (4) "Developmental disability" means a disability that:

12 (a) Is manifested prior to the age of twenty-two (22);

13 (b) Constitutes a substantial disability to the affected individual; and

14 (c) Is attributable either to an intellectual disability as defined in this section or a con-
15 dition related to an intellectual disability that results in:

16 1. An impairment of general intellectual functioning and adaptive behavior similar to
17 that of a person with an intellectual disability; and

18 2. Are a direct result of, or are influenced by, the person's cognitive deficits.

19 (5) "Exceptional support" means a service:

20 (a) Requested by a participant and the participant's team; and

21 (b) That due to an extraordinary circumstance related to a participant's physical
22 health, psychiatric issue, or behavioral health issue is necessary to:

23 1. Be provided in excess of the upper payment limit for the service for a specified

amount of time; and

2. Meet the assessed needs of the participant.

(6) ~~["Exceptional supports protocol" means the set of rules that establish how~~

~~DBHDID:~~

~~(a) Reviews an exceptional support request;~~

~~(b) Approves an exceptional support request;~~

~~(c) Revises a limit related to an exceptional support request; or~~

~~(d) Sets a standard related to an exceptional support request.~~

~~(7)~~ "Immediate family member" is defined by KRS 205.8451(3).

~~(7)~~~~(8)~~ "Intellectual disability" or "ID" means:

(a) A demonstration:

1.~~(a)~~1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

1 i. Leisure; or

2 j. Health and safety; and

3 (b) An intellectual disability that had an onset before~~[Which occurred prior to~~
4 ~~the individual reaching eighteen (18) years of age.~~

5 ~~(b) Which is demonstrated before an individual reaches]~~ eighteen (18) years of
6 age.

7 ~~(8)~~~~(9)~~ "Legally responsible individual" means an individual who has a duty under
8 state law to care for another person and includes:

9 (a) A parent (biological, adoptive, or foster) of a minor child who provides care to the
10 child;

11 (b) The guardian of a minor child who provides care to the child; or

12 (c) A spouse of a participant.

13 ~~(9)~~~~(10)~~ "Participant" means a Medicaid recipient who:

14 (a) Meets patient status criteria for an intermediate care facility for an individual with
15 an intellectual or a developmental disability as established in 907 KAR 1:022;

16 (b) Is authorized by the department to receive SCL waiver services; and

17 (c) Utilizes SCL waiver services and supports in accordance with a person centered
18 plan of care.

19 ~~(10)~~~~(11)~~ "Participant directed service" means an option to receive a service which is
20 based on the principles of self-determination and person-center thinking.

21 ~~(11)~~~~(12)~~ "POC" means Plan of care.

22 ~~(12)~~~~(13)~~ "State plan" is defined by 42 CFR 430.10.

23 ~~(13)~~~~(14)~~ "Supports for community living services" or "SCL services" means com-

community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.

(2) In order to be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and

(b) Prior authorized by the department.

Section 3. SCL Reimbursement and Limits. (1) Except as established in section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant:

(a) The amount of the charge billed by the provider; and

(b) Not to exceed the fixed upper payment rate limit for the service.

(2) The upper payment limits listed in the following table shall be the upper payment limits for the corresponding services listed in the following table:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	\$320.00
Community Access-Individual	15 minutes	\$8.00
Community Access-Group	15 minutes	\$4.00
Community Guide	15 minutes	\$8.00
Consultative, Clinical and Therapeutic	15 minutes	\$22.50

<u>Day Training through December 31, 2013</u>	<u>15 minutes</u>	<u>\$2.50</u>
Day Training <u>effective January 1, 2014</u>	15 minutes	\$2.20
Day Training (Licensed Adult Day Health Center)	15 minutes	\$3.00
Occupational therapy by occupational therapist	15 minutes	\$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	\$16.63
Physical therapy by physical therapist	15 minutes	\$22.17
Physical therapy by physical therapy assistant	15 minutes	\$16.63
Person Centered Coach	15 minutes	\$5.75
Personal Assistance	15 minutes	\$5.54
Positive Behavior Support	1 positive behavior support plan	\$665.00
Residential Level I - (4 to 8 residents)	24 hours	\$130.35
Residential Level I – (3 or less residents)	24 hours	\$172.46

Residential Level I -Technology Assisted	24 hours	\$79.00
Residential Level II -12 or more hours of supervision	24 hours	\$141.69
Residential Level II-fewer than 12 hours of supervision	24 hours	\$79.00
Respite	15 minutes	\$2.77
Speech therapy	15 minutes	\$22.17
<u>On-Site</u> Supported Employment	15 minutes	\$10.25

(3) Any combination of a day training service, a community access service, personal assistance, supported employment, and a participant's hours of employment shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized POC period.

(6) Community transition shall be based on prior authorized cost not to exceed \$2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized POC period.

(8) Day training and supported employment alone or in combination shall not exceed 160 units per week.

1 (9) Environmental accessibility shall be:

2 (a) Based on a prior authorized, estimated cost; and

3 (b) Limited to an \$8000 lifetime maximum.

4 (10) Goods and services shall not exceed \$1800 per one (1) year authorized POC
5 period.

6 (11) Natural support training shall be based on a prior authorized, estimated cost not
7 to exceed \$1000 per one (1) year authorized POC period.

8 (12) Person centered coaching shall not exceed 1320 units per year.

9 (13) Physical therapy and physical therapy by physical therapy assistant shall in
10 combination not exceed fifty-two (52) units per month.

11 (14) Occupational therapy and occupational therapy by occupational therapy assis-
12 tant shall in combination not exceed fifty-two (52) units per month.

13 (15) Respite shall be limited to 3320 units (830 hours) per one (1) year authorized
14 POC period.

15 (16) Shared living shall be based on a prior authorized amount not to exceed \$600
16 per month.

17 (17) Speech therapy shall not exceed fifty-two (52) units per month.

18 (18) A vehicle adaptation shall be limited to \$6000 per five (5) years per participant.

19 (19) Transportation:

20 (a) Provided as a participant directed service, shall be reimbursed:

21 1. Based on the mileage; and

22 2. At two thirds of the rate established in 200 KAR 2:006 Section 8(2)(d) when pro-
23 vided by an individual. The rate shall be adjusted quarterly in accordance with KAR

2:006 Section 8(2)(d); or

(b) Provided by a public transportation service provider shall be reimbursed at the cost per trip as documented by the receipt for the specific trip.

(c) Reimbursement shall be limited to \$265 per calendar month.

(20) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(21) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(22) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is re-

1 requested;

2 (b) For a limited period of time not to exceed a full POC year;

3 (c) If qualifying as an exceptional supported in accordance with the Kentucky Excep-
4 tional Supports Protocol; and

5 (d) If approved by DBHDID to be an exceptional support.

6 (2)(a) The following shall qualify as an exceptional support and to be reimbursed at a
7 rate higher than the upper payment limit established in Section 3 of this administrative
8 regulation if meeting the criteria established in subsection (1) of this section:

9 1. Community access services;

10 2. Day training that is not provided in an adult day health care center;

11 3. Personal assistance;

12 4. Respite;

13 5. Residential Level I – three (3) residents;

14 6. Residential Level I - four (4) to eight (8) residents; or

15 7. Residential Level II – twelve (12) or more hours.

16 (b) A rate increase for a service authorized as an exceptional support shall:

17 1. Be based on the actual cost of providing the service; and

18 2. Not exceed twice the upper payment limit established for the service in Section 3
19 of this administrative regulation.

20 (3) The following shall qualify as an exceptional support and to be provided in excess
21 of the unit limits established in Section 3 of this administrative regulation if meeting the
22 criteria established in subsection (1) of this section:

23 1. Consultative clinical and therapeutic services;

1 2. Person centered coaching;

2 3. Personal assistance; or

3 4. Respite.

4 (4)(a) A service that qualifies as an exceptional support shall:

5 1. Be authorized to be reimbursed at a rate higher than the upper payment limit es-
6 tablished for the service in Section 3 of this administrative regulation; or

7 2. Be authorized to be provided in excess of the unit limit established for the service
8 in Section 3 of this administrative regulation; and

9 (b) Not be authorized to be reimbursed at a higher rate than the upper payment limit
10 and in excess of the service limit established for the service in Section 3 of this adminis-
11 trative regulation.

12 Section 5. Allocation. (1) A participant shall be designated an allocated amount of
13 funding to cover SCL waiver expenses for the participant's POC period based on as-
14 sessment of the participant's needs performed by DBHDID.

15 Section 6. Participant Directed Services. (1) A reimbursement rate for a participant
16 directed service shall:

17 (a) Not exceed the upper payment limit established for the service in Section 3 of this
18 administrative regulation unless the service qualifies as an exceptional support in ac-
19 cordance with Section 3(2)(a) of this administrative regulation; and

20 (b) Include:

21 1. All applicable local, state, and federal withholdings; and

22 2. Any applicable employment related administrative costs which shall be the re-
23 sponsibility of the participant who is directing the service.

1 (2) An employee who provides a participated directed service shall not be approved
2 to provide more than forty (40) hours of service per week unless authorized to do so by
3 the department.

4 (3) A legally responsible individual or immediate family member shall not be author-
5 ized to be reimbursed for more than forty (40) hours of participant directed services per
6 week.

7 Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and
8 incident reports in accordance with the requirements established in 907 KAR 12:010.

9 Section 8. Appeal Rights. A provider may appeal a department decision regarding
10 the application of this administrative regulation in accordance with 907 KAR 1:671.

11 Section 9. Incorporation by Reference. (1) The “Kentucky Exceptional Supports Pro-
12 tocol”, November~~[July]~~ 2012 edition is incorporated by reference.

13 (2) This material may be inspected, copied, or obtained, subject to applicable copy-
14 right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,
15 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 12:020

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 12:020

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Claudia Johnson (502) 564-7702, Dr. Stephen Hall (502) 564-4527, or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the Medicaid Supports for Community Living (SCL) waiver program. The SCL program enables individuals with an intellectual or developmental disability to live, and receive services, in a community rather than in an institution.
 - (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the Medicaid SCL waiver program.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation which implements reimbursement for a new version of the Medicaid SCL waiver program. The service and coverage policies for the new SCL waiver program are established in 907 KAR 12:010. All services in the current SCL waiver program will be available in some form in the new SCL waiver program though some have been renamed or merged with one or more services. Consequently, the reimbursement in this administrative regulation corresponds to the modified services. 907 KAR 1:155 continues the reimbursement policies for the current version of the SCL waiver program and 907 KAR 1:145 contains the service and coverage policies for the existing SCL waiver program. DMS is amending the incorporated material – the Exceptional Supports Protocol – in response to comments received during the public comment period and is also establishing in this amendment after comments that the day training reimbursement limit will be \$2.50 per fifteen (15) minute unit through close of business December 31, 2013 and then drop to \$2.20 per fifteen (15) minute unit on January 1, 2014. The Exceptional Supports Protocol amending being made to accommodate circumstances when an individual needs increased behavioral health services. Delaying the day training rate reduction is being done to give

providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.

- (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation necessary to establish reimbursement rates for a new version of the Medicaid SCL waiver program. The amendment to the Exceptional Supports Protocol in response to comments is necessary to ensure that additional behavioral health services are covered when needed. Delaying the day training rate reduction is necessary to give providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation which conforms to the content of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program. The amendment to the Exceptional Supports Protocol conforms to the content of the authorizing statutes by enabling individuals to receive additional behavioral health services if circumstances warrant this. The day training amendment conforms to the content of the authorizing statutes by giving providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation which will assist in the effective administration of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program. The amendment to the Exceptional Supports Protocol will assist in the effective administration of the authorizing statutes by enabling individuals to receive additional behavioral health services if circumstances warrant this. The day training amendment will assist in the effective administration of the authorizing statutes by giving providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 such providers.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. SCL providers will have to provide services in accordance with the corresponding service and coverage policy regulation – 907 KAR 12:010 – in order to be reim-

- bursed for providing the services.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). SCL providers who provide services in accordance with (907 KAR 12:010 – the new version of the SCL waiver program) will be able to be reimbursed for providing the services.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
 - (b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 12:020

Agency Contact: Claudia Johnson (502) 564-7702, Dr. Stephen Hall (502) 564-4527, or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
 - (d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 12:020, Reimbursement for new supports for community living waiver services

Summary of Material Incorporated by Reference

The following is incorporated by reference into this administrative regulation:

The “Exceptional Supports Protocol”, is incorporated by reference. The July 2012 edition of the material is being replaced by the November 2012 edition. The primary amendment is changing the term psychiatric to behavioral health in order to accommodate circumstances when an individual needs increased behavioral health services.

Other changes include:

- Changing the term “individual” to “participant” as “participant” is the term used in the SCL waiver program now for individuals who receive SCL waiver services;
- Deleting the requirement that an exceptional support request for an individual in a congregated residential setting must include the budgets of all participants in the residential setting in order to lessen the administrative burden on providers and to expedite the process;
- Elaborating on the exceptional support protocol process by clarifying that an individual’s person centered team, through the case manager, submits an exceptional support protocol request;
- Deleting the requirement that a written summary of progress to DDID must be submitted every four (4) months [and instead stating that exceptional support protocols must be prior authorized every six (6) months] in order to simplify the process and lessen the administrative burden on providers; and
- Deleting the requirement that a request for additional supports in the area of skilled nursing must include a signature of a DDID registered nurse because the signature is unnecessary and removing the requirement will expedite the process.

The material contains five (5) pages.

A total of five (5) pages are incorporated by reference into this administrative regulation.